EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 300

Issued by the authority of the Minister for Housing

National Rental Affordability Scheme Act 2008

National Rental Affordability Scheme Amendment Regulation 2012 (No. 1)

General outline

The purpose of these amendments is to address an error that was made in the publication of income limits for households of eligible tenants under the National Rental Affordability Scheme (the Scheme). The Regulation amends the circumstances under which an approved participant is eligible to receive an incentive, in order to ensure that approved participants are not rendered ineligible to receive incentives as a result of their reliance upon the error in determining who is an eligible tenant.

Background

Section 12 of the National Rental Affordability Scheme Act 2008 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 5 of the Act provides that “the regulations must prescribe a Scheme (the National Rental Affordability Scheme)” to cover certain matters listed in that provision.

For this purpose, the National Rental Affordability Scheme Regulations 2008 (the Principal Regulations), establishes the Scheme, providing conditions for applications, assessment, allocation and eligibility for payment of incentives.

The Scheme is intended to encourage the development of affordable rental housing by offering conditional incentives to individuals and entities providing new rental housing to low and moderate income households.

The Scheme provides that an incentive is payable to an approved participant in respect of a dwelling when the conditions of an allocation for that dwelling are satisfied. The conditions of allocation include a requirement that the dwelling is rented to tenants who are prescribed as “eligible tenants” by the Principal Regulations.

Limits are placed on the income levels of the households of eligible tenants, which are subject to annual indexation based on the annual percentage change between March quarter Consumer Price Index figures as published by the Australian Bureau of Statistics. Existing eligible tenants are able to exceed the income limits by up to 25% and still remain eligible. Existing tenants only become ineligible once their household income exceeds the income limits by 25% or more in two consecutive “eligibility years” (as defined in paragraph 19(1)(c) of the Principal Regulations).
The purpose of the Regulation is to address an error that was made in the publication of tenants’ household income limits for eligible tenants under the Scheme. On 1 May 2012, when tenant income limits for the 2012-13 NRAS year (which extends from 1 May 2012 to 30 April 2013) were calculated, indexation was incorrectly applied to increase income limits based on comparing the December quarter CPI figures, rather than the increase based on comparing the March quarter CPI figures as required under the Principal Regulations.

Published figures were increased by 3.1% (the movement between December quarters), rather than by 1.6% (the movement between March quarters).

The Regulation establishes a new basis (besides Regulation 25 of the Principal Regulations) under which an approved participant is eligible to receive an incentive, in order to ensure that approved participants are not rendered ineligible to receive incentives as a result of their reliance upon the error in determining who is an eligible tenant.

Specifically, the amendments provide that an approved participant may still be eligible to receive an NRAS incentive for a dwelling if new tenants of the dwelling during the 2012-13 NRAS year had combined gross income which exceeded the income limits by an amount less than the difference between the correctly indexed tenant income limits and the incorrect tenant income limits as published.

As the Principal Regulations also allow existing tenants to exceed tenant income limits by up to 25% and still remain “eligible tenants” in accordance with Regulation 19 of the Principal Regulations, the Regulation would allow incentives to be paid to approved participants where tenants’ household income exceeds the 25% limit, but by less than the erroneously published figures. The Regulation provides that if existing tenants cease to be eligible because their household income exceeds the household income limit in the 2012-2013 NRAS year by up to 26.875% (which is equivalent to the allowable excess of up to 25% plus the percentage by which the incorrect tenant income limits which were published exceeded the correct tenant income limits), an incentive may still be payable in respect of the dwelling leased to those tenants for both the 2012-13 and 2013-14 NRAS years. Rules regarding the amount by which existing tenants can exceed household income limits are proposed for only these two NRAS years because the indexing error will only have an impact on incentives paid for the NRAS year of the error and the following NRAS year. This is as a result of the fact that a tenant only ceases to be an “eligible tenant” once their household income exceeds the household income limits by 25% or more for two consecutive eligibility years under paragraph 19(3)(b) of the Principal Regulations.

The Act does not specify conditions that need to be satisfied before the power to make the regulations may be exercised.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.
The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

No consultation was undertaken in relation to these amendments because, as they are intended to beneficially remedy an administrative error, consultation was not considered necessary.

The Department consulted with the Office of Best Practice Regulation, which has advised (reference number 14360) that as the Regulation is machinery in nature, a Regulation Impact Statement for the Regulation is not required.

**Detailed Description of Amendments**

**Section 1 – Name of regulation**

This regulation provides that the title of the Regulations is the *National Rental Affordability Scheme Amendment Regulation 2012 (No. 1)*.

**Section 2 – Commencement**

This regulation provides for the Regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments. This ensures that the amendments will only have prospective effect.

**Section 3 – Amendment of National Rental Affordability Scheme Regulations 2008**

This regulation provides that Schedule 1 amends the *National Rental Affordability Scheme Regulations 2008* (the Principal Regulations).

**Schedule 1**

This Schedule provides for a new Regulation 25A to be inserted after Regulation 25 of the Principal Regulations, relating to “Additional eligibility in the 2012-13 and 2013-14 NRAS years”.

Subregulation 25A(1) provides that, for the 2012-13 NRAS year (the year beginning 1 May 2012), if all other conditions of an allocation have been satisfied, and

- new tenants of a dwelling were not eligible tenants when they became tenants, or
- existing tenants ceased to be eligible tenants

by reason only of exceeding the household income limit by up to the amount by which the income limits published by FaHCSIA exceeded the correct income limits, then the approved participant is still able to be eligible to receive the incentive for the dwelling.

Subparagraph 25A(1)(b)(i) allows for an approved participant to be entitled to receive an incentive in relation to a dwelling if, in the 2012-13 NRAS year, the
combined gross household income for new tenants of that dwelling exceeded the household income limit by less than 1.5%, which is the difference between the correct indexation figures and the incorrect indexation figures that were published by FaHCSIA, rounded to the nearest decimal point.

The focus on “new tenants” in this subparagraph reflects the requirement in subregulation 19(2) of the Principal Regulations for eligible tenants to have combined gross income less than the income limit for their household as at the start date of their tenancy.

Subparagraph 25A(1)(b)(ii) allows for an approved participant to be entitled to receive an incentive in relation to a dwelling for the 2012-13 NRAS year if the household income of the existing tenants of the dwelling exceeded the household income limit by less than 26.875%. This percentage figure is derived by applying the difference between the correct indexation figures and the incorrect indexation figures that were published to the 25% margin by which, under paragraph 19(3)(b) of the Principal Regulations, an existing tenant is able to exceed the income limit for their household and still remain an eligible tenant (125% multiplied by 1.015 is 126.875%).

Subregulation 25A(2) provides that, for the 2013-14 NRAS year, an approved participant may still be eligible to receive an incentive for a dwelling if the (existing) tenants of the dwelling have ceased to be eligible tenants (under paragraph 19(3)(b) of the Principal Regulations) due to having exceeded the household income limit by less than 26.875% in the 2012-13 NRAS year, as long as all other conditions of the allocation have been satisfied.

Besides ensuring incentives can be paid to approved participants for dwellings rented to new tenants in the 2012-13 NRAS year whose household incomes were within 1.5% of the correctly indexed income limits, these amendments also ensure that approved participants are not adversely affected by relying on incorrectly published figures with respect to the rule in paragraph 19(3)(b) of the Principal Regulations which ensures a tenant is no longer an “eligible tenant” once their combined gross household income exceeds the income limit by 25% or more for two consecutive eligibility years. The error made in relation to the 2012-13 NRAS year can have an ongoing effect for incentives paid with respect to both the 2012-13 NRAS year and for the following NRAS year in 2013-14, which is why provision is being made for both of those NRAS years in relation to existing tenants.
Statement of Compatibility with Human Rights

(Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011)

National Rental Affordability Scheme Amendment Regulation 2012 (No. 1)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Of the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011, this legislative instrument engages the right to an adequate standard of living, including housing, as referred to in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (done at New York on 16 December 1966 ([1976] ATS 5)).

This legislative instrument is consistent with furthering the right to adequate housing, as it is a beneficial measure to ensure that approved participants in the Scheme can remain in receipt of incentives and continue to deliver affordable rental accommodation to tenants notwithstanding their reliance on erroneously published indexation figures.